

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

**ORIGINAL**

**MAR 21 1996**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

In the Matter of )

Revision of Part 22 and Part 90 )  
of Commission's Rules to )  
Facilitate Future Development of )  
Paging Systems )

WT Docket No. 96-18

Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

DOCKET FILE COPY ORIGINAL

PP Docket No. 93-253

To: The Commission

**JOINT COMMENTS ON INTERIM  
LICENSING PROPOSAL**

AACS Communications, Inc.  
AirTouch Paging (and its affiliates)  
Answer, Inc.  
Arch Communications Group, Inc. (and its subsidiaries)  
Cal-Autofone  
Centrapage of Vermont  
Centracom, Inc.  
Communications Enterprises  
Desert Mobilfone  
Detroit Newspaper Agency  
Electronic Engineering Company  
Hello Pager Company, Inc.  
Jackson Mobilphone Company  
LaVergne's Telephone Answering Service  
Midco Communications  
Donald G. Pollard d/b/a Siskiyou Mobilfone  
PowerPage, Inc.  
Radio Electronic Products Corp.  
RETCOM, Inc.  
Westlink Communications

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## **SUMMARY**

A broad-based coalition of over 20 paging companies (the "Joint Commenters") is filing a consolidated set of comments on the interim licensing procedures that should apply to paging applications during the rulemaking proceeding in which a revised market area licensing plan utilizing auction procedures is under consideration.

The Joint Commenters support the adoption of an interim plan that will allow modifications of existing systems to be implemented. Even if such interim relief is granted, however, it will remain critical for final rules to be adopted as soon as possible in order to allow long pending frequency conflicts to be resolved so service to the public can commence on currently blocked frequencies.

The Joint Commenters propose a series of interim measures that will provide needed flexibility while preserving valuable "white space" pending auction. Based upon the construction requirements proposed for MTA licensees, the Joint Commenters recommend that incumbents who already serve on a particular channel area encompassing 66 2/3 percent of the population be allowed to prosecute modification applications. The public interest is not served by delaying necessary additions to mature systems of this nature since the small population base of the remaining territory will make the area unattractive to newcomers.

The Joint Commenters also propose: (a) lifting the freeze on Part 22 frequencies because the current mutual-exclusivity rules are adequate to protect against the loss of valuable white space; (b) allowing exclusive local and regional PCP operators to add expansion sites in close proximity to operating facilities; (c) allowing engineering settlements to resolve mutual-exclusivities as contemplated by the Omnibus Budget Reconciliation Act of 1993; and (d) adopting rules that permit frequency swaps between licensees so that wide-area systems can be established.

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its affiliates),<sup>1/</sup> Answer, Inc., Arch Communications Group,  
Inc. (and its subsidiaries)<sup>2/</sup>, Cal-Autofone, Centrapage of

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<sup>1/</sup> The licensee affiliates of AirTouch Paging are:  
AirTouch Paging of Virginia, Inc., AirTouch Paging of  
Kentucky, Inc., AirTouch Paging of Texas, AirTouch  
Paging of California and AirTouch Paging of Ohio.

<sup>2/</sup> Licensee subsidiaries of Arch Communications Group  
include: Arch Capitol District, Inc., Arch Connecticut  
Valley, Inc., Hudson Valley Mobile Telephone, Inc.,  
Arch Michigan, Inc., Arch Southeast Communications,  
Inc., Becker Beeper, Inc., The Beeper Company of  
America, Inc., BTP Acquisition Corporation, Groome  
Enterprises, Propage Acquisition Corporation, USA  
Mobile Communications, Inc. II, Q Media Company -  
Paging, Inc., Q Media Paging - Alabama, Inc., Premiere  
Page of Kansas, Inc. and Professional Communications,  
Inc.

Vermont, Centracom, Inc., Communications Enterprises, Desert Mobilfone, the Detroit Newspaper Agency, Electronic Engineering Company, Hello Pager Company, Inc., Jackson Mobilphone Company, LaVergne's Telephone Answering Service, Midco Communications, Donald G. Pollard d/b/a Siskiyou Mobilfone, PowerPage, Inc., Radio Electronic Products Corp., RETCOM, Inc. and Westlink Communications, (collectively, the "Joint Commenters"), do hereby file their Joint Comments on the interim licensing proposal set forth in the Notice of Proposed Rulemaking, FCC 96-52, released February 9, 1996 (the "Notice") in the above-captioned proceeding. The following is respectfully shown:

**I. The Joint Commenters are Interested Parties**

1. The Joint Commenters represent a broad cross-section of paging companies, including: (a) small, medium and large carriers,<sup>3/</sup> (b) closely-held and publicly-traded companies,<sup>4/</sup> (c) local, regional and nationwide operators,<sup>5/</sup>

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<sup>3/</sup> For example, the number of units in service ranges from a few thousand in the case of Jackson Mobilphone Company to over 2,000,000 in the cases of Arch Communications Group and AirTouch Paging.

<sup>4/</sup> For example, several of the commenters are family owned businesses (e.g., Hello Pager Company) while others are listed on public exchanges (AirTouch Communications and Arch Communications Group).

<sup>5/</sup> For example, the Detroit Newspaper Agency provides local service in Detroit Michigan and Westlink provides regional services in the western U.S. AirTouch Paging and Arch Communications Group operate nationwide.

(d) lowband, VHF, UHF and 900 MHz licensees,<sup>5/</sup> (e) Part 22 and Part 90 operators,<sup>7/</sup> (f) start-up companies and long established incumbents<sup>8/</sup>; and (g) paging-only companies and telecommunications conglomerates.<sup>9/</sup> Consequently, the Joint Commenters have a substantial basis for informed comment in this proceeding. Indeed, the fact that so diverse a group of carriers has reached a consolidated position on interim licensing issues demonstrates that a consensus is forming in the industry which is deserving of great weight by the Commission.

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<sup>5/</sup> Collectively, the Joint Commenters hold licenses in the 35 MHz, 43 MHz, 150 MHz, 450 MHz, 929 MHz and 931 MHz bands.

<sup>7/</sup> The Joint Commenters include licensees who hold only Part 22 licenses (e.g., PowerPage), Part 90 licenses only (e.g., Detroit Newspaper Agency) and both categories of licenses (e.g., AACs Communications, AirTouch Paging, Arch Communications Group, Electronic Engineering Company and Westlink).

<sup>8/</sup> For example, PowerPage received its first authorizations less than one year ago. Others (e.g. Cal-Autofone and LaVergne's Telephone Answering Service) have held licenses since the days when wireless operators were known as "Miscellaneous Common Carriers."

<sup>9/</sup> For example, Arch Communications Group generally is considered a pure paging carrier. Midco Communications is part of a diverse communications company that provides broadcasting, cable, long distance, wireless and international gateway services.

## **II. Preliminary Statement**

2. The Notice evidences a good faith attempt by the Commission to accord paging companies needed flexibility to serve the public during the pendency of the market area licensing proceeding by requesting comment on an expedited schedule on an Interim Licensing Plan. The Joint Commenters applaud the Commission's effort to minimize the adverse impact on paging consumers of the application freeze imposed in this transition period. However, it is essential for the Commission to recognize at the outset that the adoption of an interim plan will not change the fact that final licensing rules must be put in place as soon as possible if service to paging subscribers is to continue to flourish.

3. In 1993 the Commission decided to use auctions to resolve mutually exclusive requests for a common carrier paging frequency.<sup>10</sup> Yet, to date, not a single auction for traditional paging channels has been conducted, though mutually exclusive paging applications have continued to pile up. For example, the latest run of the 931 MHz application processing computer program identifies over 1,100 applications filed before January of 1995 as being "BLOCKED". Both the number and percentage of blocked 931

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<sup>10</sup> Implementation of Sections 3(a) and 332 of the Communications Act, (Third Report and Order), Gen. Docket No. 93-252, 9 FCC Rcd. 7988, 8135 (1994).



MHz applications will increase dramatically when the Commercial Wireless Division proceeds to process the large number of applications filed between January 1, 1995 and the present. The 931 MHz paging channels are a major resource used by the paging industry to serve the ever increasing market demand for paging service, and this spectrum must be available for assignments to avoid serious disruptions in the provision of important services<sup>11/</sup>. The Commission must make it a priority to get final auction rules in place so that consumers can continue to receive high quality service in areas of substantial need.

### **III. The Continued Ability to Modify Paging Systems is Critical**

4. The Notice cites the Commission's commitment "to allow incumbent licensees to continue operating their businesses and meeting public demand for paging services during this rulemaking" by allowing them "to add sites to existing systems or modify existing sites...."<sup>12/</sup> The Joint Commenters appreciate this recognition that the provision of

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<sup>11/</sup> In some instances, the Joint Commenters have experienced system delays approaching 15 minutes per hour during peak periods, which is commercially unacceptable for a communication service that consumers expect to be instantaneous. Delays of this nature also threaten the life saving potential of the "Life Page" program which is a major public service project of the paging industry.

<sup>12/</sup> Notice, para 140.

paging services in a highly competitive environment requires that carriers be able to continually modify systems to meet changing demands of the marketplace. Stiff competition is waged between multiple paging carriers in virtually every market in the country on the basis of coverage, reliability, customer service and price. A licensing freeze substantially impairs the ability of licensees to continue to compete on these bases.

5. The ability of incumbents to expand existing systems is critically important and will serve the public interest in several ways: First, freezing competitors into current service patterns, even on a temporary basis, artificially locks the marketplace into the status quo, to the detriment of the public. For example, if only one carrier in a market happens to provide a signal that reliably penetrates a new office complex when the freeze is imposed, this incumbent may get to maintain this competitive edge indefinitely, and may even be able to extract premium rates due to the inability of competitors to match the coverage. This runs directly contrary to the Commission's stated objective to have "competitive success...dictated by the marketplace, rather than by regulation".<sup>13/</sup>

6. Second, because the paging licensing rules currently in effect generally limit a carrier to seeking one

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<sup>13/</sup> Notice, para. 2.

new frequency at a time,<sup>14/</sup> carriers cannot simultaneously build out wide-area systems on multiple channels.<sup>15/</sup> This has created an ongoing need for system expansion as one channel becomes loaded and an additional channel needs to be built out to serve a comparable area and avoid a disruption in sales or service.<sup>16/</sup>

7. Third, there now are acute public interest needs to modify authorized systems because of the significant delays that have been experienced in securing grants of 931 MHz proposals. For all practical purposes, there has been a de facto freeze on 931 MHz grants while the application processing algorithm for this band was being developed, refined and implemented to allow automated

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<sup>14/</sup> See, e.g., Sections 22.525(a) and 90.495(d) of the Commission's Rules.

<sup>15/</sup> Prior to January 1995, a paging carrier could apply for a second frequency as soon as the authorization for the first frequency was granted. 47 C.F.R. §§22.16(c), 22.516 and 22.525 (1994). In 1995, the rules were changed to permit a carrier to apply for a second paging channel in the same general area only after a previously granted frequency was granted and placed in service. 47 C.F.R. §§22.539 (1995). This rule change increased the lead time required to bring a subsequent channel on line.

<sup>16/</sup> Typically, a carrier will build out a primary system that provides depth of coverage on a wide area basis, while other channels licensed to the carrier in the region are limited to local or "traveller's coverage" (i.e. coverage only of major thoroughfares and population centers). Ideally, coverage on the second channel would be expanded and improved when the first channel started to approach capacity. Any licensing disruptions that interrupt this natural progression can cause grade of service to deteriorate rapidly.

processing.<sup>17/</sup> Because the recently granted 931 MHz applications have been pending for so long -- over 24 months in many cases -- carriers now have an acute need to file modification applications to satisfy market demands that have changed during the unexpectedly long period that the initial system applications were pending.

8. Finally, and most importantly, allowing carriers to continue to modify existing systems properly recognizes that paging is a dynamic industry that exhibits all of the positive attributes of a highly competitive market. Subscribership is increasing,<sup>18/</sup> prices are falling,<sup>19/</sup> technological innovation is occurring<sup>20/</sup> and systems are expanding. The Commission deserves much credit for adopting the open entry policies and licensing scheme that created this robust competitive market, and should not

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<sup>17/</sup> See Public Notice released May 3, 1995 ("Commercial Wireless Division Announces Streamlining of Processing Procedures"); Public Notice, Mimeo No. 55301, released August 14, 1995 ("FCC Releases Results of Test Run of its New Software for the Processing of 931 MHz Paging Applications").

<sup>18/</sup> Paragraphs 6 and 7 of the Notice acknowledge the dramatic growth in the number of pagers in service. Some of the Joint Commenters have experienced recent growth that exceeds the growth figures cited by the Commission.

<sup>19/</sup> See Land Mobile Radio News, July 1, 1994 ("As Paging Prices Keep Declining Subscriber Numbers Increase").

<sup>20/</sup> Technological innovations include the development of higher speed systems, advanced signalling protocols and a variety of interactive narrowband PCS applications.

take any actions now that will spoil its success. The best course is to accord paging companies reasonable flexibility to modify existing systems while the transition to market area licensing is taking place.<sup>21/</sup>

#### **IV. Additional Relief from the Partial Freeze is Justified**

9. The Notice suspends the acceptance of new applications for paging channels as of February 8, 1996, except: (a) incumbent licensees are allowed to add sites or modify sites without prior Commission authority provided that such additions or modifications do not expand the interference contour<sup>22/</sup> on an incumbent's existing

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<sup>21/</sup> The Joint Commenters recognize that paging providers have been given greater latitude than certain other applicants/licensees that have undergone a transition of this nature. For example, the Commission recently imposed a total application freeze on 39 GHz applicants, with no indication that interim relief for incumbents was under consideration. Notice of Proposed Rulemaking and Order, FCC 95-500, adopted December 15, 1995. The additional latitude given to paging applicants is justified because paging is a relatively mature and highly competitive industry in a particularly dynamic phase of growth.

<sup>22/</sup> Counsel to the Joint Commenters has confirmed in discussions with the Commercial Wireless Division and the Wireless Telecommunications Bureau that the relevant contour for 931 and 929 MHz stations within which changes can be made is the fixed radius specified at 47 C.F.R. § 22.537 at Table E-2. Carriers may use the proposed interference formula discussed in the Notice at paragraph 52 to drop in stations that, on a calculated basis, do not expand the pre-existing defined interference contour.

frequency;<sup>23/</sup> and, (b) licensees who have obtained nationwide exclusivity on a 931 MHz or 929 MHz channel can continue to add additional or modified sites without restriction.<sup>24/</sup>

10. The aforementioned exceptions are welcomed, but do not accomplish fully the Commission's objective of allowing the paging industry to continue to flourish. Permitting expansion within existing interference contours - - as opposed to the prior, more restrictive rule which defined permissive changes as those within existing service area contours -- solves what is referred to in the industry as the "hole-in-the doughnut" problem,<sup>25/</sup> but does not address the vast majority of system expansions. Typically, paging companies add transmitters to: (a) improve coverage in an area where reliability is spotty due to terrain or

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<sup>23/</sup> Notice, para. 140.

<sup>24/</sup> Notice, para. 142. In light of this exception, the Joint Commenters believe it would be appropriate for the Commission to relieve nationwide exclusive PCP carriers from having to file applications at all.

<sup>25/</sup> Attachment A depicts a situation in which the service area contours of four proximate co-channel stations do not overlap (creating the so-called "hole in the doughnut") while the interference contours do. If a carrier could not add a facility which increased the composite service area contour of any station, a site could not be added on a permissive basis at Location E. Using the composite interference contour as the benchmark enables a transmitter to be added at Location E, which is the correct result since no other applicant could file to locate there, and no prospect of interference to stations of other licensees is presented.

building density, (b) meet competition, (c) satisfy the service needs of a new subscriber, or (d) make coverage on a new channel comparable to what subscribers received on a previously developed channel. Most of these routine circumstances involve applications that are not wholly within existing interference contours. As a consequence, the Commission's current licensing exceptions fall short of satisfying the objective of allowing service to the public to continue.

**A. Uncontested Non-Mutually Exclusive Part 22  
Applications Should be Processed**

11. Properly viewed, the Commission needs to balance its desire to preserve "white space"<sup>26/</sup> pending the adoption of market-area licensing auction rules against the need to allow service to the public to evolve without disruption. Fortunately, for Part 22 services this public interest balance is easily struck in favor of continued application processing. Unlike certain prior instances in which the transition to auction was from a first-come, first-served application processing environment,<sup>27/</sup> in Part 22 the Commission has existing rules that already

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<sup>26/</sup> "White space" refers to areas not within an existing service contour that is available to be licensed.

<sup>27/</sup> For example, Part 90 previously provided for grants of 800 and 900 MHz SMR frequencies on a first-come, first-served basis.

contemplate the use of auctions to resolve mutually exclusive ("MX") applications.<sup>28/</sup> As a result, the Commission can allow the marketplace to identify applications that propose to serve white space which would prove valuable in an auction.

12. Specifically, the Commission should lift the freeze on all Part 22 paging frequencies and allow carriers to file modification applications in the ordinary course of business. If an application is uncontested and non-mutually exclusive after a 30-day cut-off period, the Commission should process and grant the proposal. This result is fully consistent with the Omnibus Budget Reconciliation Act of 1993<sup>29/</sup> which authorized auctions, but limited their use to situations of mutual exclusivity.<sup>30/</sup> On the other hand, if an application is subject to a competing mutually exclusive filing, the Commission may determine that an auction is appropriate, and defer processing the application until market area auction rules are in place.<sup>31/</sup> This proposed

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<sup>28/</sup> Revision of Part 22 of the Commission's Rules, CC Docket No. 92-115, 9 FCC Rcd. ("Part 22 Rewrite Order") at 6513, 6534, para. 98 (1994).

<sup>29/</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (the "Budget Act").

<sup>30/</sup> Budget Act, Section 117 (now codified at 47 U.S.C. Section 309(j)).

<sup>31/</sup> If the Commission properly publicizes the partial lifting of the freeze, any application proposing to serve white space of interest to more than one party  
(continued...)



approach satisfies the dual public interest objectives of allowing relatively minor system modifications to proceed without delay while preserving valuable white space for assignment by auction.

13. In order for the proposed plan to work for 931 MHz frequencies, the Commission should remove the stay on the portion of the Part 22 Rewrite Order<sup>32/</sup> that called for frequency specific 931 MHz proposals and a 30 day MX window. All 931 MHz applications filed after the Stay is lifted would be required to specify a particular frequency.<sup>33/</sup> This would put the 931 MHz applications on an equal footing with other paging applications, enabling mutual exclusivities to be easily identified and processing to be handled as proposed above.

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<sup>31/</sup> (...continued)

will end up being MXed. The Commission also can make it clear in partially lifting the freeze that it reserves the right to dismiss mutually exclusive applications filed under the old processing rules and to accept market area applications instead. Applicants who file with notice of this impending change will have no basis to object to the procedure.

<sup>32/</sup> See Part 22 Rewrite Order, 9 FCC Rcd. 6513 (1994), partially stayed, 10 FCC Rcd. 4146 (1995).

<sup>33/</sup> Pending applications filed before February 9, 1996 would continue to be processed using the algorithm.

**B. Sites Proximate to Existing 929 MHz  
Facilities Should be Allowed**

14. In the 929 MHz band, applications have been processed on a first-come, first-served basis, making it impossible to use MX application rules to identify proposals that propose to serve white space of interest to others. In this band, the Joint Commenters propose a narrow exception to the freeze to allow existing carriers to add sites to their own regional PCP systems within 40 miles of an operating site, and to local systems within 25 miles of an operating site. These exceptions will provide sorely needed flexibility while strictly limiting the area that can be claimed during the transition period.

15. The proposed 40 mile and 25 mile standards are derived from existing paging rules. The PCP exclusivity rules require a "local" PCP station to have either 6 or 18 transmitters, each of which must be located within 25 miles of another transmitter in the system.<sup>34/</sup> The Joint Commenters' proposal uses this existing 25 mile standard to define a transmitter that is sufficiently proximate to an operating location on the same frequency of a local system to be deemed permissive. Similarly, Section 22.539(b) of the rules<sup>35/</sup> uses a 40 mile rule to define 931 MHz paging

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<sup>34/</sup> 47 C.F.R. §90.495(2)(1)(i)(A).

<sup>35/</sup> 47 C.F.R. §22.539(b).

stations that are deemed to be in "the same geographic area" for licensing purposes. The Joint Commenters propose that the Commission use this rule to define which sites proposed to be added to an existing regional PCP system are sufficiently proximate to existing sites to be allowed.

16. By limiting future expansion to sites that are near to operating locations, the Commission will avoid the "leapfrogging"<sup>26/</sup> problem. Before a second expansion could occur, carriers would be obligated to (i) locate an initial expansion site close to an existing in-service site, (ii) wait for the appropriate modification application to be prepared, filed, processed and granted, and (iii) build at the new location. This limited exception will only permit minimal expansion on previously licensed frequencies.

**C. The Freeze Should Not Apply to Channels That Serve A High Population Threshold**

17. If the Commission for any reason is unwilling to lift the freeze on Part 22 applications and Part 90 applications as advocated above by the Joint Commenters, at the very least relief should be accorded to incumbents on channels which now serve a sufficient percentage of the population in a service territory to make the channels

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<sup>26/</sup> "Leapfrogging" occurs when a carrier adds one site after another, with each successive site extending the service and/or interference contour slightly further than the previous filing.

unlikely candidates for bidding in a future market area auction. Again, the objective should be to strike a balance in favor of allowing continued improvements in service to the public when circumstances indicate that valuable white space is not being lost.

18. The Notice proposes to require market area licensees to provide service to areas encompassing 1/3 of the population in 3 years and 2/3 of the population in 5 years.<sup>37/</sup> Whether or not the final licensing rules take this precise form, the fact remains that any territory in which 2/3 of the population, no doubt concentrated in major urban areas, is being served will be of little or no value to a newcomer. Yet, the need for the incumbent to add sites to this system will continually arise.<sup>38/</sup> Relief from the freeze is justified in these circumstances.

19. Consequently, the Joint Commenters request that the Commission allow an incumbent operator to file and prosecute an application for an additional location on a frequency already licensed to the carrier within the MTA if the incumbent certifies that the composite reliable service

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<sup>37/</sup> These construction obligations strike the Joint Commenters as being reasonable.

<sup>38/</sup> A fully developed system of this nature will no doubt be serving a substantial number of customers. As these customers expand their own business and areas of operation, needs for extended area coverage will certainly arise.

area contour<sup>39/</sup> of existing stations on the frequency serve in excess of 66 2/3% of the MTA population.<sup>40/</sup>

**D. Carriers Who Build Compliant Nationwide  
PCP Systems Should Not be Frozen**

20. The Notice appears to exempt from the freeze only nationwide carriers who were operating compliant systems as of February 8, 1996.<sup>41/</sup> This cut-off is arbitrary and unfair to carriers who were well on their way to completing construction of a qualifying nationwide system, but had not done so by the adoption date of the Notice. The Joint Commenters believe that the Commission should give carriers who now hold authority to construct a nationwide system incentive to continue with construction by allowing them to get out from under the freeze as soon as they certify that they have placed in service a system that meets the nationwide exclusivity criteria.<sup>42/</sup> This proposal

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<sup>39/</sup> For this purpose, 931 and 929 MHz operators would use the fixed mileage service area contours specified in the rules.

<sup>40/</sup> While the Joint Commenters do not think it necessary, the Commission could allow others to file competing applications once an incumbent has certified and filed following thereby adding another check to assure that white space of interest to multiple applicants was identified.

<sup>41/</sup> Notice, para. 142.

<sup>42/</sup> Section 90.495(a)(3) requires 300 transmitters dispersed throughout the U.S. to meet specific coverage requirements to qualify for nationwide exclusivity.

has the incidental benefit of giving full faith and credit to the current exclusivity rules while the transition to market area licensing is occurring. Maintaining the status quo in this fashion will add needed consistency to the regulatory process.<sup>43/</sup>

**E. Secondary Licensing Is Not  
the Entire Answer**

21. The Notice inquires whether allowing carriers to add sites on a secondary basis will provide the flexibility needed to expand existing systems.<sup>44/</sup> The Joint Commenters have several concerns which cause them to conclude that secondary licensing -- while better than a total freeze -- is not an adequate solution. First, the uncertainty associated with secondary status will discourage carriers from making investments in such sites, to the detriment of the public. Also, secondary licensing could encourage speculation in the forthcoming market area

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<sup>43/</sup> Allowing carriers to continue to earn exclusivity under the existing rules pending a change to market area licensing is particularly appropriate in view of the long time it took the Commission to release the Order on Reconsideration in the PCP exclusivity proceeding. PCP carriers already have been subjected to considerable uncertainty while the PCP rules remained under review. At the very least, the recently affirmed rules should remain in effect during the transition to market area licensing.

<sup>44/</sup> Notice, para. 143.

auction.<sup>45/</sup> Finally, secondary licensing could result in a future loss of service to the public.

22. If all licenses granted during the transition are deemed secondary, then potentially competing applicants will not be required to announce their intention to prosecute a competing proposal. Knowing this, an existing carrier will be discouraged from investing money in new sites. Additionally, many carriers will decide that it is a lesser evil to defer extending service to a new area than to be forced to withdraw service at a future date if a secondary site does not ripen into a permanent license.<sup>46/</sup> The net effect of these disincentives is a substantial disruption in the natural evolution of a wide area paging system.

23. On balance, while the Joint Commenters believe that secondary licensing is better than a total freeze, they urge the Commission to consider the less restrictive interim processing rules proposed in these Joint Comments.

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<sup>45/</sup> Insincere applicants would be notified where they might speculate in the auction by buying up white space that had been licensed to others on a secondary basis.

<sup>46/</sup> The withdrawal of service can cause serious problems to critical customers.

**V. Settlements Should Be Allowed  
to Resolve Mutual Exclusivities**

24. The Notice indicates that the Commission will continue to process under the existing rules pending applications provided that they are not MXed, and the time for filing competing applications has expired.<sup>47/</sup> The Notice is silent, however, on whether carriers are allowed to resolve mutual exclusivities by agreement thereby permitting application processing to resume.

25. Several public interest considerations argue in favor of allowing settlements. First, the language in the Budget Act, which established the Commission's auction authority, specifically directed the Commission to make every effort to avoid mutually exclusive application situations by use, among other things, of engineering solutions such as frequency coordination and amendments to eliminate frequency conflicts.<sup>48/</sup> This Congressional intent recently has been reiterated in a letter from U.S. Senators Larry Pressler and Thomas Daschle to Chairman Hundt

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<sup>47/</sup> In effect, this formulation prevents the Commission from processing any application accepted for filing within 30 days of the Notice since the MX period will not have expired. This will result in a freeze on some proposals that would not have been contested. Instead, the Commission should reopen the MX window on any application filed prior to the freeze so that uncontested proposals can be identified and granted.

<sup>48/</sup> Budget Act, §117 (codified at 47 U.S.C. §§ 309(j)(6)(E)).



regarding 39 GHz licensing procedures.<sup>49/</sup> The correspondence clearly indicates that the opportunity to generate revenue should not be used by the Commission as justification for allowing the Commission to preclude settlements.

26. Given the underlying statutory scheme, allowing settlements of paging application conflicts is the correct approach. Moreover, allowing settlements will properly recognize the extent of inter-carrier cooperation that exists in the paging industry. Frequency coordination, frequency sharing, joint licensing, traffic exchange, reselling and other cooperative inter-carrier arrangements are commonplace in the industry, and should be encouraged. Notably, the Commission may allow settlements knowing that "greenmail" will not occur. Longstanding settlement rules in this service have limited reimbursements to legitimate, documented out-of-pocket expenses.<sup>50/</sup> The incentives for filing obstructive competing proposals having long since been removed, the Commission may allow settlements under the current rules knowing that safeguards against unreasonable buy-outs are already in place.

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<sup>49/</sup> Letter to The Honorable Reed E. Hundt from Senator Larry Pressler and Senator Thomas Daschle dated February 9, 1996 filed with reference to ET Docket No. 95-183.

<sup>50/</sup> 47 C.F.R. §22.129.